IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-01-2007

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.42543 of 2006
And
M.P.No.1 of 2006

Dr.S.Ajay Venkatesh .. Petitioner

Vs.

1.Union of India
rep., by its Secretary to
Government, Ministry of
Shipping, Road Transport
and Highways,
New Delhi-1.

2.National Highways Authority of
India, Rep., by its Project
Director, 4 Laning NH-7,
Coimbatore.

3.The District Collector,
Salem District,
Salem.

4.The District Revenue Officer,
(Competent Authority/
Land Acquisition Officer),
4 Laning, NH-7,
Salem.

5.The Special Tahsildar,
National Highways,
4 Laning, NH-7,
Salem. .. Respondents

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Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Declaration, declaring the land acquisition proceedings in the Declaration made under Section 3D of the National Highways Act published in the Central Government Gazette No.S.O.1083 dated 22.9.2003 in so far as it relates to the lands belonging to the petitioner comprised in Survey No.3/2B-2 of Meiyanoor Village and the lands in Survey No.28/18B-2, 28/19A-2 and 28/20A-2 of Narasothipattty Village, Salem Taluk, Salem District as unconstitutional and illegal.

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For Petitioner : Mr.R.Muthukumarasamy,
Senior Counsel for
Mr.A.Jenasenan.

For Respondents-1&2 : Mr.P.Wilson,
Asst. Solicitor General
of India.

For Respondents-3to5 : Mr.V.Arun,
Govt. Advocate.

ORDER

The petitioner is the owner of the lands in Survey No.3/2B2 of Meiyanoor Village and the lands in Survey Nos.28/18B2, 29/19A2 and 28/20A2 of Narasothipatty Village, Salem Taluk, Salem District. The said lands are sought to be acquired by the National Highways for the purpose of building, maintenance, management or operation of the Fore Laning of National Highways No.7 (BSM Section). Aggrieved by the said acquisition, the petitioner has filed the present writ petition.

2. Separate notifications were issued in respect of the lands in both these Villages, culminating in separate Awards also being passed and the petitioner has chosen to come up before this Court after the Awards were passed.

3. I have heard Mr.R.Muthukumarasamy, learned senior counsel appearing for the petitioner, Mr.P.Wilson, learned Assistant Solicitor General of India appearing for respondents 1 and 2 and Mr.V.Arun, learned Government Advocate appearing for respondents 3 to 5.

4. For the better appreciation of the facts leading to the present writ petition, the dates and events have been summarised as follows:-

	Meiyanoor Village	Narasothipatty Village
3A(1) Notification	19.12.2002	13.12.2002
Paper Publication of Notification	04.01.2003	26.12.2002
Publication in the Village	12.01.2003	04.01.2003
Enquiry	23.04.2003 & 14.05.2003	23.04.2003 & 14.05.2003

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3D(1) Notification	22.09.2003	22.09.2003
3G3 Notification	27.10.2003	27.10.2003
Award	14.01.2004	05.02.2004

5. Though the petitioner has challenged the acquisition proceedings on several grounds, Mr.R.Muthukumaraswamy, learned senior counsel appearing for the petitioner, restricted the grounds of attack only to four, in view of the stand taken by the respondents in the counter-affidavit. These four grounds of attack are as follows:-

> (a) that though the land is sought to be acquired for a National Highway, part of the land is sought to be utilised for strengthening and expanding a State Highway and hence the invocation of the powers under the National Highways Act, 1956, was illegal;
>
> (b) that though the normal standards for providing extra land for strengthening is only about 100 to 200 metres and the respondents themselves have claimed it to be 300 metres, the lands of the petitioner located beyond 350 metres are also sought to be acquired;
>
> (c) that the lands of the petitioner are of sentimental attachment to the petitioner since his mother and grandmother are buried in the land and the petitioner and his family members perform poojas at regular intervals; and
>
> (d) that in any event the petitioner would be satisfied if he is provided at least alternative lands on the other side of the highway, in lieu of compensation.

6. Per contra, Mr.P.Wilson, learned Additional Solicitor General of India, contended that the purpose of acquisition is only for strengthening the National Highways; that there is nothing called normal standards while taking up extra land; that the sentimental values should pave the way for public interest; and that the respondents are not in a position to provide alternative land in lieu of compensation and that the challenge to the acquisition proceedings cannot be maintained at this stage.

7. Taking up the last contention of the learned senior counsel appearing for the petitioner, it is seen that there are Government Poramboke lands available on the other side of the road. But the National High Ways Act provides only for payment of compensation in cash under Section 3G and there is no provision for payment of compensation in kind. As a matter of fact, the Land Acquisition Act, 1894 contains a provision for acquisition of land by negotiations. The National Highways Act, 1956 does not even contain a provision for acquisition of land by negotiation. Therefore there is no scope for the Competent Authority under the National Highways Act, to act otherwise than in accordance with the provisions of the Act. If a Statutory Authority is obliged to perform a function in a particular manner by the Statute, he shall perform the same only in

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accordance with the Statute and not otherwise. Hence, there cannot be a direction to the respondents to provide lands to the petitioner in lieu of compensation, since there is no provision in the Act for the respondents to do so.

8. The third contention of the learned senior counsel appearing for the petitioner cannot also be accepted in view of the fact that overwhelming public interest will have to take precedence over sentimental values of private individuals. This Court has come across cases where even properties used as burial grounds or cemeteries were acquired for a public purpose. Therefore, the third ground of attack also cannot be sustained.

9. Coming to the second ground of attack viz., that as per normal standards, the respondents take land only up to a distance of about 100 metres and that the lands of the petitioner are situate about 300 to 400 metres away from the junction point, it is seen from para-14 of the counter-affidavit that the extent of 850 sq. metres sought to be acquired from the petitioner was reduced to 630 sq. metres after the enquiry and that it was the minimum requirement to suit the geometric condition of the road. The averment that as per standard drawings related to National Highways, the improvement of junction could be done only to the extent of 100 metres to 200 metres, has been denied by the respondents in para-23 of the counter-affidavit. Moreover, the respondents have stated in para-23 of the counter-affidavit that there are no standard drawings and that it may vary from place to place according to site conditions and that according to site condition and as per design requirement, the length may also vary. On the averment that the land of the petitioner is located beyond 300 to 350 metres from the junction point, at the tail end of the land coming under acquisition, the respondents have stated in para-11 of the counter-affidavit as follows:-

> "I respectfully submit that the said land is situated 300 m away from the junction of NH-7 and situated in old NH-7 leading to five roads and the NH-7 chainage 199.150 to 199.450 have already been taken over by NHA-1 from State Highway for this purpose of junction points of NH-7 also cannot be cited as one of the reasons for omitting the acquisition. The land plan schedules have been prepared taking into account the geometric improvements accident spots safety requirements and connectivity to existing 4-lane road towards shifting of water supply may not beyond the service road."

10. Therefore, the question as to whether there are any standard norms and whether such standard norms are actually exceeded, is not a subject matter for judicial review. The acquisition of a land for National Highways can be objected to only on certain well established principles. No standard norms are prescribed either by the Act or by any Executive Instructions issued in pursuance of the provisions of the Act. Therefore the standard norms, even if there are any, cannot be enforced through a Court of law, as they confer no right upon the individual whose lands are sought to be acquired.

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11. Coming to the first contention of the learned senior counsel appearing for the petitioner, which appears to be far more attractive than

the other contentions, it is seen that the power of the Central Government to acquire a land under the National Highways Act, 1956 is confined only to the acquisition of a land required for the building, maintenance, management or operation of a National Highway or part thereof. All Highways in the country are not National Highways. By virtue of Section 2 of the Act, only those Highways specified in the Schedule to the Act and those which are declared by the Central Government by notification, alone are National Highways. In this case, the contention of the learned senior counsel for the petitioner is that a part of the land is admittedly proposed to be used by the National Highways, for strengthening the State Highways and that therefore, the National Highways Act, 1956 could not be invoked. But I am unable to accept the said submission for the simple reason that the respondents proposed to strengthen the State Highways only for the purpose of management and operation of National Highways No.7, which comes within the purpose specified in Section 3A(1) of the Act. The purpose of the acquisition is narrated by the respondents in para-13 of the reply-affidavit as follows:-

> "The land acquired from the petitioner is indispensable as it is proposed to improve the junction since this is an important 'Y' road junction where the existing old-2 land NH road (SH) branches from the four lane divided carriageway of Bangalore - Salem - Madurai section of NH-7 of km 199/200. Under this package the road junction is now proposed to be improved to suit the traffic needs and without causing hindrance to the free flow of traffic in the main four lane divided carriageway corridor. All the vehicle like Buses, Lorries and Two Wheelers etc that are proceeding from Salem City to Bangalore and vise versa are to enter or leave the 4-lane divided carriageway at this 'Y' section. Presently the 'Y' junction is without junction improvement which leads to accidents. On analysis of the traffic pattern it is seen that there is heavy flow of traffic coming from Salem City and enters into the 4-lane carriageway and that suitable road junction improvements to improve the traffic flow without causing hindrance to free flow of traffic in the main lane carriageway is found to be essential."

12. Therefore, though the respondents have stated in para-4 of their letter dated 30.11.2006 that about 300 metres length of State Highway are intended to be improved as a part of junction improvement, it cannot be said that the purpose of acquisition is alien to Section 3A(1) of the Act. Consequently, the first contention of the learned senior counsel for the petitioner also deserves to be dismissed.

13. As seen from the list of dates and events narrated in paragraph-4 above, the petitioner has approached this court only after the Awards were passed. The Awards were actually passed on 14.1.2004 and 5.2.2004 and the petitioner filed the writ petition 2-1/2 years after the Awards were passed. It has been repeatedly held by the Apex Court that a writ petition challenging the acquisition proceedings cannot be entertained after the Award is passed. In this case, the petitioner sought to justify his action in approaching this Court long after the Award, only on the ground that his request for deletion of the lands was considered by

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the Ministry and an order passed only on 23.2.2006. Such explanation can at the most be construed as an explanation for the delay in approaching the Court. But it cannot make the writ petition maintainable after 2-1/2 years of the date of the Award. Under such circumstances, there are no merits in the writ petition and it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Svn.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
Union of India
Ministry of Shipping,
Road Transport
and Highways,
New Delhi-1.

2.The Project Director
National Highways Authority of
India, 4 Laning NH-7,
Coimbatore.

3.The District Collector,
Salem District,
Salem.

4.The District Revenue Officer,
(Competent Authority/
Land Acquisition Officer),
4 Laning, NH-7,
Salem.

5.The Special Tahsildar,
National Highways,
4 Laning, NH-7,
Salem.

+1cc to Mr.A.Jenasenan,Advocate Sr No.3542

+1cc to Mr.P.Wilson,Asst.S.G.Sr.No3687.

MM (C.O)
dcp 25.1.07

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